

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

ROBERT ZELLNER,

Plaintiff,

v.

Case No. 08-C-0315

**DARYL HERRICK,
JOHN PENDERGAST,
LINDA BORKENHAGEN,
and CEDARBURG SCHOOL DISTRICT,**

Defendants,

DECISION AND ORDER

The Plaintiff, Robert Zellner (“Zellner”), filed a letter requesting that the Clerk of Court remove 44 papers that were filed in this action from the record on appeal because they are not germane to the matters that are the subject of the appeal. Federal Rule of Appellate Procedure 10(a) addresses the composition of the record on appeal and provides in relevant part:

The following items constitute the record on appeal:

(1) the original papers and exhibits filed in the district court;

(2) the transcript of proceedings, if any; and

(3) a certified copy of the docket entries prepared by the district clerk.

Fed. R. App. P. 10(a). The items that Zeller wants struck from the appellate record are papers that were filed with the Court and are to be included in that record. Moreover, Zellner is not contending that materials were omitted from or misstated the record. *See* Fed. R. App. P. 10(e). Therefore, Zellner's request is one that must be addressed to the court of appeals for this circuit. *See* Fed. R. App. P. 10(e)(3) ("All other questions as to the form and content of the record must be presented to the court of appeals").

NOW, THEREFORE, BASED ON THE FOREGOING, IT IS HEREBY ORDERED THAT:

Zellner's letter request that 44 papers be removed from the record on appeal is (Docket No. 124) is **DENIED**.

Dated at Milwaukee, Wisconsin this 11th day of January, 2011.

BY THE COURT

s/ Rudolph T. Randa

Hon. Rudolph T. Randa
U.S. District Judge